

DECISION



29330
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215589

DATE: September 17, 1984

MATTER OF: Wang Laboratories, Inc.

DIGEST:

1. Agency's decision to procure computers on a brand name only basis will be upheld where the agency offers a rational basis for the decision and the protester does not prove the decision to be clearly unreasonable.
2. Procuring agency's decision to procure computer equipment on a brand name only basis is reasonable where only the specified computer has been fully tested and the agency does not have the resources to test other equipment in time to meet its needs.

Wang Laboratories, Inc. (Wang), protests as unduly restrictive of competition the brand name only purchase description in the Small Business Administration (SBA) invitation for bids (IFB) No. 84-15-CT.

The protest is denied.

The IFB, issued on May 21, 1984, solicited bids to supply 38 Digital Equipment Corporation Rainbow 100 Personal Computers (Rainbow 100) with an option for 25 additional computers and specified that no other computer would be considered for award. At bid opening on June 21, the SBA received six responsive bids. Despite the pendency of Wang's protest, the SBA awarded the contract to Automated Business Systems and Services, Inc., the low responsive bidder, based on its determination that the computers were urgently needed.

Wang protests that the make and model purchase description is an undue restriction on competition and violates Federal Acquisition Regulation (FAR), 48 Fed. Reg. 41, 102 (1983) (to be codified at 48 C.F.R.), governing competitive procurements. Specifically, Wang asserts that under FAR §§ 10.002, 10.004, and Federal Procurement Regulations, 41 C.F.R. § 1-4.1109 (1983), a brand name only purchase description may be used only where the procuring agency adequately justifies that the brand name item is the only item which will meet the agency's needs. Wang alleges

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that the SBA has not complied with this standard and that the procurement should have been issued on a brand name or equal basis.

In response to Wang's protest, the SBA first notes that the Federal Information Resources Management Regulations (FIRMR), 41 C.F.R. § 1-4.11, rather than FAR part 10, govern this solicitation for automatic data processing equipment. However, the SBA also acknowledges that under the FIRMR, brand name only specifications must be adequately justified. Therefore, Wang's erroneous reliance on FAR part 10 does not preclude us from considering Wang's protest.

Concerning the merits of Wang's protest, the SBA states that it needs a computer which is compatible with both the Sperry UNISCOPE terminal and with the SBA Data Communications System technical communications requirements and custom-written programs. The SBA asserts that the only way it can insure that offered equipment meets these requirements is by stringent testing. The SBA reports that it specified the Rainbow 100 because at the time the IFB was issued, this was the only computer that had been fully tested and found compatible with the SBA's requirements. The SBA states that it is presently testing the computers of other manufacturers, but that it did not have the time or money to complete these tests before the computers were needed. In this regard, SBA reports that if it delayed the procurement to test all the equipment offered as compatible, the agency's debt collection function, a primary agency concern, would be frustrated. The SBA notes that a memorandum prepared by the Office of Management and Budget states that the SBA should implement an automated debt collection system as quickly as possible.

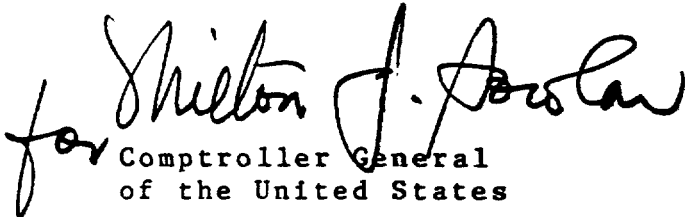
Wang does not dispute that the SBA's minimum needs are for a computer which is compatible with the Sperry UNISCOPE terminal and the SBA's Data Communications System. Wang complains, however, that the agency has not proven that the Rainbow 100 is the only computer which will meet the agency's requirements. Wang does not believe that the agency's lack of money and resources to test equipment is a sufficient justification for not permitting bidders to offer computers equal to the Rainbow 100.

We have held that specifications should state only the actual minimum needs of the agency and should not limit acceptable offers to one supplier's product unless that product is the only one which will satisfy the agency's needs. Security Assistance Forces & Equipment oHG, B-202012, Jan. 15, 1982, 82-1 C.P.D. ¶ 34. Where an agency

determines that its needs only can be met by one manufacturer's product, however, the agency is not required to compromise its needs to obtain competition. Aul Instruments, Inc., et al., B-186854, June 29, 1977, 77-1 C.P.D. ¶ 461. Thus, we will uphold an agency's rationally based decision to procure on a brand name basis unless the protester shows that the decision is clearly unreasonable. Diesel Parts of Columbus, B-200595, July 20, 1981, 81-2 C.P.D. ¶ 50; Ampex Corporation, B-191132, June 16, 1978, 78-1 C.P.D. ¶ 439.

Here, given that the agency needed the computers immediately to fulfill one of its primary functions, we think SBA's decision to procure the Rainbow 100 on a brand name basis because that is the only computer fully tested and that the SBA did not have the time or money to test the other computers is reasonable. See Aul Instruments, Inc., B-186854, supra. Further, we do not find that Wang has met its burden of proving that this decision was clearly unreasonable. Wang suggests that the agency could limit its testing of equal computers by testing only the computer of a bidder who submits a low responsive bid. This suggestion, however, does not address the delay that will result if the offered equipment does not pass the tests. Accordingly, Wang's protest is denied.

However, we recommend that the agency proceed as expeditiously as possible to test the equipment of other manufacturers alleging to have products equal to the Rainbow 100 so that future requirements can be procured on a brand name or equal basis.

for 
Comptroller General
of the United States